IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11643 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATIONAL INSURANCE CO LTD

Versus

PUSHPABEN HIRABHAI MUTCHADIA

Appearance:

1. Special Civil Application No. 11643 of 2002

MR NAGESH C SOOD for Petitioner No. 1

MR YATIN SONI for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 02/08/2003

ORAL JUDGEMENT

Rule. Mr.Soni waives service of rule for respondents. With the consent of learned advocates for

parties matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner challenging the legality and validity of the order, dated 4.3.02 passed by the Motor Accident Claims Tribunal(Aux), Rajkot below Exh.14 in MACP No.1311/01 whereby the application for joining owner and insurance company of the truck as party is dismissed.

3. Heard Mr.Sood for the petitioner and Mr.Soni for the respondents.

4. The only question involved in this petition is whether the learned tribunal is justified in rejecting the application for impleading the owner and insurance company of the truck as party or not when as per the say of the petitioner-Insurance company to some extent the liability can be said to be of the truck owner and the insurance company.

5. The short facts of the case appear to be that the accident took place of the motorcycle with mini-bus and the police authorities have also filed the chargesheet against the driver of the mini-bus. However, it has come on record even in the panchnama that the person driving the motorcycle was lying near the wheel of the truck. Therefore, the presence of the truck at the scene of offence is disclosed as per panchnama. Under the circumstances, the petitioner moved an application-Exh.14 for impleading the owner and insurance company of the said truck as party. The Ld.tribunal found that in the present accident the truck was in a stagnant position and therefore it can not be said that the truck is involved in the accident and therefore the owner and insurance company of the truck are not required to be impleaded as party .

6. In my view, the aforesaid is an erroneous approach on the part of the tribunal on the face of it. The party to the proceedings may be either necessary or proper party. The necessary party is such in whose absence no effective order can be passed for granting relief prayed. Property party would be such whose presence may be required by the court for convenient adjudication of the matter. If the truck was in stagnant position, the possibility can not be ruled out of the liability at the time when the evidence is recorded and all the material is placed before the court. If the truck owner and the insurance company of the truck is not impleaded as party even at the time when the matter is finally adjudicated and decided by the tribunal, it would

be difficult for the tribunal to pass effective order for fastening the liability, if ultimately it is found that the truck in stagnant position has also to some extent contributed for accident. As such, from the record it appears that with a view to have proper adjudication and also with a view to see that the court may be in a position to pass effective order after the evidence is led and record is placed, the presence of the owner and insurance company of the truck would be required. Therefore, the owner and insurance company of the truck, in my view, can be said to be a necessary and proper party. The aforesaid aspect is not considered and error apparent on the face of the record is committed by the tribunal which calls for interference by this court in exercise of power under Article 227 of the Constitution of India.

7. As such, as observed earlier, if the owner and insurance company of the truck are not brought on record it would result into irreversible situation and may also result into wastage of public time by joining parties subsequently if it comes on record that to some extent there is contribution to the accident by the truck whixch was in stagnant position, and therefore, would result into injustice to the claimants though of course the application is moved by the insurance company of the mini-bus which was also involved in the accident. Therefore also the order passed by the tribunal deserves to be quashed and set aside and the application-Exh.14 made by the petitioner deserves to be allowed.

9. In view of the aforesaid discussion, the order dated 4.3.02 passed by the MACT(Aux) Rajkot below application-Exh.14 in MACP No.1311/01 is quashed and set aside and the application-Exh.14 for joining party shall stand allowed.

10. Rule is made absolute accordingly. There shall be no order as to costs.

DS permitted.

2.8.03 (JAYANT PATEL,J)